

**IN THE SUPREME COURT  
STATE OF MISSOURI**

---

**IN RE:**

**JOHN C. DAVIS,**

**Respondent.**

)  
)  
)  
)  
)

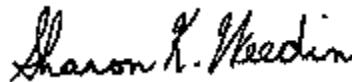
**Supreme Court #SC92110**

---

**INFORMANT'S BRIEF**

---

OFFICE OF  
CHIEF DISCIPLINARY COUNSEL



SHARON K. WEEDIN #30526  
STAFF COUNSEL  
3335 AMERICAN AVENUE  
JEFFERSON CITY, MO 65109  
(573) 635-7400 - PHONE  
(573) 635-2240 – FAX  
[Sharon.Weedin@courts.mo.gov](mailto:Sharon.Weedin@courts.mo.gov)

ATTORNEY FOR INFORMANT

**TABLE OF CONTENTS**

<b>TABLE OF CONTENTS .....</b>	<b>1</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>2</b>
<b>STATEMENT OF JURISDICTION .....</b>	<b>3</b>
<b>STATEMENT OF FACTS .....</b>	<b>4</b>
<b>POINT RELIED ON .....</b>	<b>11</b>
<b>ARGUMENT .....</b>	<b>12</b>
<b>CONCLUSION .....</b>	<b>20</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>21</b>
<b>CERTIFICATION: RULE 84.06(C) .....</b>	<b>21</b>
<b>APPENDIX.....</b>	<b>22</b>

**TABLE OF AUTHORITIES**

**CASES**

*In re Belz*, 258 S.W. 3d 38, 40, 47 (Mo. banc 2008)..... 11, 12, 13, 16, 17, 18, 19, 20

**RULES**

Rule 5.285 (a) (b) (c) (1). ..... 12, 13, 16, 17

### **STATEMENT OF JURISDICTION**

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law and Section 484.040 RSMo 2000.

## **STATEMENT OF FACTS**

### **Background**

Respondent Davis was born in 1943. He graduated from the University of Michigan School of Law in 1968 and began practicing law at what was then Stinson, Mag, & Fizzell that same year. App. 21. His practice centered on estates and trusts. App. 22. Mr. Davis practiced exclusively at the firm now known as Stinson, Morrison, & Hecker in Kansas City until February 8, 2010, on which date he withdrew from the firm at the firm's request. App. 135.

Respondent Davis is married to Jane Davis.

Respondent has no disciplinary history.

### **Facts Underlying Misconduct**

Respondent represented Dorothy Neville and her husband, Homer Neville, in estate planning matters. When Mr. Neville died in 1991, Mr. Davis, at Ms. Neville's request, made some changes to her estate planning. He prepared a revocable trust, for which Ms. Neville served as trustee, a healthcare power of attorney, and a business power of attorney. Respondent was named successor trustee of the revocable trust, her executor, and Ms. Neville's agent under the healthcare and business powers of attorney. App. 138. The revocable trust assets, at the inception of the trust, were worth more than a million dollars. App. 37. Respondent was named trustee of the trust in 1993, after Ms. Neville suffered several strokes. App. 37.

Ms. Neville had no biological children. She had no surviving immediate family in her later years. App. 137. Mr. Neville had two daughters with his first wife and several grandchildren. There was little communication and no visiting between the stepdaughters and Ms. Neville. App. 38, 140. Ms. Neville's will left her financial assets and personal property to the grandchildren. App. 138.

On April 13, 2009, Respondent opened a bank account for the Neville Trust at U.S. Bank with an initial deposit of over \$100,000.00. App. 115. On April 15, 2009, Respondent wrote three checks out of the account: one to the IRS in the amount of \$70,000.00; one to the State of Kansas for income tax in the amount of \$7,000.00; and one to the Missouri Department of Revenue in the amount of \$6,000.00. App. 155-157. The checks were for payment of Respondent and his wife's personal tax liabilities. The payments were made without the knowledge or consent of Ms. Neville or the trust beneficiaries.

Ms. Neville died on May 23, 2009. App. 98. The trust had a value of more than \$4,000,000.00 in early 2010. App. 43-44.

In January of 2010, the chair of Stinson Morrison's Tax, Trusts, and Estate Division reviewed Respondent's ongoing matters as part of his duties as chair of the department in which Respondent worked. The chair expressed concern to the firm's general counsel regarding Mr. Davis' billing in the Neville trust matter and about the employment by Davis of his wife to serve as the supervisor of Ms. Neville's care. The firm's general counsel and the division chair met with Respondent on January 19, 2010,

to discuss their findings and concerns. App. 151-153. As a consequence of the firm's review, Respondent was asked to withdraw from the firm, which he did on February 8, 2010. The firm also asked Respondent to resign as trustee of the Neville trust, which he did on March 2, 2010. App. 135-136. Stinson Morrison attorneys thereafter, in a letter dated April 20, 2010, reported to disciplinary authorities their concerns about Respondent's handling of the trust. App. 151-153.

Bank records reflect that funds in the amounts of \$83,000.00 and \$1,490.00 were credited to the trust's U.S. Bank checking account on January 21, 2010. App. 151. Respondent has acknowledged repaying the trust with interest. App. 115-116.

Commerce Bank of Kansas City was appointed successor trustee over the Neville Trust following Respondent's resignation. App. 136. Commerce Bank thereafter reviewed the trust records and discovered the U.S. Bank checking account opened in 2009, as well as the three aforementioned checks, written on the account to various tax authorities. Commerce reported its findings to Stinson Morrison, which thereafter supplemented its report to disciplinary authorities. App. 151-153.

### Mitigating Evidence

Respondent Davis met with Dr. Stephen Peterson, a psychiatrist, on November 2 and December 6, 2010, for a psychiatric evaluation. App. 89. As a consequence of his evaluation, Dr. Peterson diagnosed Respondent with mild to moderate Avoidant Personality Disorder and alcohol dependence. App. 107.

Avoidant Personality Disorder is diagnosed when there is a pervasive pattern of social inhibition, feelings of inadequacy, and hypersensitivity to negative evaluation. App. 107. The seven criteria for avoidant personality disorder, four of which must be present for a diagnosis, are as follows:

- avoiding occupational activities that involve significant interpersonal contact (due to fear of criticism, disapproval or rejection)
- unwillingness to involve others unless certain of being liked
- restraint within intimate relationships due to the fear of shame or ridicule
- preoccupation with social criticism or rejection
- feelings of inadequacy that inhibit new interpersonal situations
- viewing self as socially inept or inferior
- reluctance to take on personal risks or new activities as they may be embarrassing

App. 107.

In April of 2009, when Respondent wrote the checks out of the trust account to pay his personal tax liabilities, he and his wife were in the middle of a “\$700,000.00 remodel of their \$500,000.00 house.” App. 103. He believed he and his wife had lived beyond their means for years. It was an ongoing source of marital conflict. Respondent had procrastinated paying the taxes. He and Jane were arguing about money around the time he paid their taxes out of the trust funds. App. 101. Respondent felt Jane exerted a



lot of financial pressure on him. She had not yet paid any of her 2008 tax withholding when he wrote the checks out of the estate funds. App. 103-104. It was a time of very marked financial resentment between Respondent and his wife. App. 107.

Dr. Peterson believed Respondent underreported the contribution of alcohol use to his problems. In 2008 and 2009, Respondent drank to manage severe stress with his wife, their finances, and his wife's deteriorating health. App. 106. At the time of the misappropriation, Respondent was drinking nearly every evening and had alcohol-induced loss of memory up to two nights per week. App. 108.

Respondent was also stressed, at the time of the misappropriation, about two possible legal malpractice matters in his practice. Both matters were ultimately resolved satisfactorily without much financial penalty to him or his firm. App. 104.

At the last minute he paid the taxes out of trust funds to avoid conflict with his wife. He believed that if he paid them out of their joint account, his wife would see the debit and it would create difficulties in his marriage. App. 103-104. Respondent and his wife had more than sufficient funds available with which he could have paid the taxes. App. 103, 107.

#### Disciplinary Case

A four count information was filed against Respondent in March of 2011. App. 2-7. Count I charged Respondent with the April 15, 2009, misappropriations from the trust.

Count II charged Respondent with overbilling the trust. This count was based on allegations in the Stinson Morrison report letter that Respondent may have overbilled the trust for tasks that should not have taken the amount of time recorded by Respondent.

There was also concern that Respondent billed in even hour increments as opposed to the firm's standard tenth of an hour increments. App. 135.

Count III charged Respondent with conflict of interest in hiring and paying his wife out of trust funds to supervise Ms. Neville's care. Beginning in 1996, Respondent's wife, Jane, was paid by the trust to supervise caregiver services for Ms. Neville. Ms. Davis supervised Ms. Neville's care at the various facilities in which she resided, took her to appointments with healthcare providers, accompanied her during numerous hospital stays, and socialized with her. Ms. Davis summarized her services to Ms. Neville in a document dated April 7, 2011. App. 120-126. For the services she performed from 1996 to 2009, Ms. Neville's trust paid Ms. Davis approximately \$497,000. App. 40.

Count IV charged Respondent with failing to deposit a tax refund check, payable to the Neville trust, in a client trust account. The evidence suggested Respondent misplaced, not misappropriated, the refund check. App. 152-153.

The disciplinary case was set for hearing before a disciplinary hearing panel on August 30, 2011. On that day, disciplinary counsel and Respondent submitted to the panel a joint stipulation of facts, joint proposed conclusions of law, and joint recommendation for sanction. App. 114-117. In the joint stipulation of facts, Respondent admitted the Count I charge of misappropriating trust funds totaling \$83,000. App. 115. Disciplinary authorities agreed to dismiss Counts II, III, and IV without

prejudice. App. 116. Both parties agreed to recommend the sanction of indefinite suspension with leave to file for reinstatement in three years. App. 116.

At the hearing, Respondent gave testimony in response to questions from panel members and counsel. App. 35-51. Counsel for Respondent and disciplinary counsel made statements and provided some additional exhibits. The panel subsequently adopted the facts, conclusions, and sanction recommendation of the parties. App. 145-146.

Both parties accepted the disciplinary hearing panel's decision. On December 6, 2011, the Court ordered the record filed and initiated a briefing schedule.

**POINT RELIED ON**

**THE COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR THREE YEARS BECAUSE, WHILE DISBARMENT IS MOST OFTEN THE APPROPRIATE SANCTION IN A MISAPPROPRIATION CASE, RESPONDENT PRODUCED EVIDENCE IN MITIGATION SUFFICIENT TO WARRANT LENGTHY SUSPENSION IN THAT AN INDEPENDENT MENTAL HEALTH PROFESSIONAL DIAGNOSED RESPONDENT AS SUFFERING FROM A MENTAL DISORDER AND ALCOHOL DEPENDENCE AT THE TIME OF THE MISCONDUCT AND OTHER SUBSTANTIAL MITIGATING FACTORS ARE PRESENT.**

*In re Belz*, 258 S.W. 3d 38 (Mo. banc 2008)

## ARGUMENT

**THE COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR THREE YEARS BECAUSE, WHILE DISBARMENT IS MOST OFTEN THE APPROPRIATE SANCTION IN A MISAPPROPRIATION CASE, RESPONDENT PRODUCED EVIDENCE IN MITIGATION SUFFICIENT TO WARRANT LENGTHY SUSPENSION IN THAT AN INDEPENDENT MENTAL HEALTH PROFESSIONAL DIAGNOSED RESPONDENT AS SUFFERING FROM A MENTAL DISORDER AND ALCOHOL DEPENDENCE AT THE TIME OF THE MISCONDUCT AND OTHER SUBSTANTIAL MITIGATING FACTORS ARE PRESENT.**

### Joint Stipulation

In this original attorney disciplinary proceeding, submitted to the Court by way of a joint stipulation of facts, joint proposed conclusions of law, and joint sanction recommendation, Respondent has admitted misappropriating \$83,000 from a trust he was serving as trustee. As part of the stipulated resolution, disciplinary authorities dismissed, without prejudice, three of the four counts in the pending information and agreed with Respondent to recommend an indefinite suspension without leave to apply for reinstatement for three years. Both Respondent and disciplinary authorities acknowledged the authority and applicability of *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008), to their analysis of an appropriate disposition for this case.

Subsequent to the *Belz* decision, the Court adopted Rule 5.285, which expanded *Belz's* reiteration that mental disorder can be considered a mitigating factor in sanction

analysis in a lawyer discipline case involving misappropriation. Inasmuch as Rule 5.285 became effective February 8, 2010, before the instant case was filed, it applies.

Comments by counsel during the hearing before the disciplinary hearing panel offer insight into the thinking behind the agreement to submit the case by joint stipulation. Both parties recognized the precedential authority of *Belz*, which figured prominently in the agreement to submit the case by joint stipulation. During the hearing before the panel, Respondent's counsel acknowledged that until the *Belz* case was brought to their attention, they firmly believed Mr. Davis' conduct in April of 2009, which was characterized by them as aberrant and out of character, and "which had never occurred before and is unlikely to occur again," was properly sanctionable by a suspension "not to exceed 18 months." App. 21-26, 82-84. Joe Moore,<sup>1</sup> who was disciplinary counsel's special representative in the case, told the panel he was open to dismissing Counts II through IV in exchange for Respondent's admission of the most serious misconduct, pled in Count I, because, in his view, the counts that were ultimately dismissed largely involved billing issues that were subject to contradicting expert testimony. Mr. Moore also suggested to the panel that a three year suspension, to a 68-year old man like Respondent, was tantamount to disbarment. App. 19-21.

---

<sup>1</sup> Mr. Moore passed away on September 30, 2011.

### Review of Facts

Respondent Davis, currently 68 years old, began serving in Kansas City as trustee for the trust of a widowed client, Dorothy Neville, in 1993, after Ms. Neville suffered some strokes. Respondent had provided legal services to Ms. Neville and her husband, who died in 1991, for many years, including drafting their estate planning documents and the trust at issue. Respondent continued serving as trustee of Ms. Neville's trust (she died on May 23, 2009), until his resignation on March 2, 2010. Respondent's resignation came at the request of the law firm with which he had been affiliated since 1968, currently known as Stinson Morrison Hecker LLP. The events that led the firm, in early 2010, to ask Respondent to withdraw from the firm, as well as to resign from his position as trustee, are summarized below.

In January of 2010, the chair of Stinson Morrison's tax, trusts, and estate division reviewed Respondent's files as part of his administrative duties. His review of the Neville Trust matter led him to question Respondent's billing of the trust, both for Respondent's legal services and because Respondent had authorized payments, over many years, from the trust to Respondent's wife for her services in supervising the care being provided to Ms. Neville. Firm representatives met with Respondent on January 19, 2010, to discuss their concerns about the trust billing issues. Respondent was asked to withdraw from the firm, which he did effective February 8, 2010, and to resign as trustee of the Neville Trust, which he did effective March 2, 2010.

After Respondent's resignation as trustee, a bank was appointed successor trustee. The successor trustee's review of information from the trust's bank and brokerage firm

statements revealed the following. On April 13, 2009, Respondent established a bank checking account into which he transferred Neville Trust funds in excess of \$100,000. On April 15, 2009, Respondent wrote three checks totaling \$83,000 from the account. All three checks were payable to federal and state tax authorities, and were written to pay Respondent and his wife's 2008 tax obligations.

Two days after firm representatives initially confronted Respondent with their concerns about the trust billing issues (on January 21, 2010), Respondent had deposited sufficient funds into the checking account to cover the misappropriated \$83,000, with interest.

The Stinson Morrison firm reported its concerns about Respondent's billing of the trust in a letter to disciplinary authorities dated April 20, 2010. After the successor trustee reported its findings to the firm regarding the April 2009 transactions, the firm sent a supplemental report to disciplinary authorities, dated September 3, 2010, disclosing the misappropriation.

#### Sanction Recommendation

The admitted facts constitute a classic case of lawyer misappropriation of fiduciary funds. On April 13, 2009, Mr. Davis opened a new checking account in the name of the Neville Trust, which he served as trustee and attorney. He transferred approximately \$100,000.00 in trust assets into the new account. On April 15, 2009, he paid his personal taxes (totaling \$83,000.00) with trust assets by writing three checks, written on the Neville Trust account, to the Internal Revenue Service, the State of



Kansas, and the Missouri Department of Revenue. These facts, considered alone, would almost certainly result in the lawyer's disbarment.

As the Court observed in *In re Belz*, 258 S.W. 3d 38 (Mo. banc 2008), however, even in misappropriation cases the Court considers whether mitigating factors may warrant a sanction other than disbarment. It is, then, appropriate to do so in this case.

When Respondent initially consulted with the attorney representing him in this matter, Spencer Brown, about the disciplinary allegations, Mr. Brown "could not believe it." App. 22. Mr. Brown had known Davis since they began practicing law in Kansas City in the late sixties. He knew Respondent as a highly respected estates and trusts lawyer with no professional or personal marks against his name. The misconduct was so "out of character" and "just unexplainable," that Mr. Brown and his co-counsel, Gerald Handley, directed Respondent to a mental health professional for evaluation. App. 22.

Dr. Stephen Peterson, a psychiatrist, thereafter performed a psychiatric evaluation of Respondent. The resulting twenty-one page evaluation is dated March 7, 2011. Dr. Peterson was not Respondent's treating physician. While Respondent and his counsel chose Dr. Peterson, disciplinary counsel has no reason to question that Dr. Peterson fits the "independent, licensed mental health professional" criteria described in Supreme Court Rule 5.285(c). Informant did not opt to have Respondent evaluated by a second mental health professional.

Respondent timely raised Dr. Peterson's diagnosis of mild to moderate avoidant personality disorder as a mitigating factor in his answer to the information. See Rule 5.285(b). Dr. Peterson identifies avoidant personality disorder as a diagnosis found in the

DSM-4-TR. See Rule 5.285(a)(1). Respondent's answer to the information alleges that the disorder "impaired [Respondent's] judgment, cognitive ability and emotional function in relation to the performance of his professional duties and commitments which along with alcohol dependence, must be considered by Informant in any recommendation of discipline." App. 10-11. See Rule 5.285(b).

Respondent's counsel thereafter advocated for consideration of Dr. Peterson's psychiatric evaluation of Respondent in mitigation of sanction. The evaluation was included as an exhibit to the stipulation entered into between Respondent and Informant and submitted to the disciplinary hearing panel. Informant defers to Respondent and his brief to direct the Court's attention to the specifics of Dr. Peterson's evaluation that Respondent believes the Court should consider in mitigation of sanction; suffice it to say Informant believed mitigating consideration was appropriate under Rule 5.285 and *In re Belz*.

Particular reference to the facts in *Belz* and the facts admitted in this case may be helpful. Mr. Belz, while serving as trustee of a client's trust, misappropriated funds from the trust multiple times over a four year period. He kept accurate records of each unauthorized withdrawal, and provided restitution of some of the misappropriated funds during the four year period of its taking. He used the stolen money to pay his mortgage and to meet law firm expenses. *In re Belz*, 258 S.W. 3d at 39-40.

Four years into Belz's unauthorized withdrawals from the trust, Belz became seriously ill and feared death. He then revealed the misappropriations to his son and law

partners. Together they decided Belz should report his misconduct to disciplinary counsel and repay the trust with interest. Belz thereafter did both. 258 S.W. 3d at 40.

Mr. Davis wrote three checks out of his client's trust on one date, April 15, 2009. He repaid the money, with interest, on January 21, 2010, after he was made aware that there were concerns about his handling of the trust. Respondent's former firm, not Respondent, reported his misconduct to the Office of Chief Disciplinary Counsel.

Both Belz and Davis provided medical evidence that they suffered from mental disorders at the time of their defalcations. Belz's disorder had been diagnosed long before his misconduct, but it was not controlled by medication during the four years he was stealing from the trust. Davis' disorder was not diagnosed until after Respondent was made aware that he was being investigated by disciplinary authorities. The psychiatric evaluation, however, evidences that Respondent had a history of mental health concerns and counseling that predated his misconduct.

Both Belz and Davis were highly regarded attorneys and pillars of their communities when they misappropriated client trust funds. Mr. Belz was approximately fifty-five years old when he began misappropriating; Mr. Davis was sixty-six years old at the time of his misappropriation.

Both Davis and Belz provided evidence that their mental disorders were, at the time of their disciplinary cases, treatable and currently controlled.

Disciplinary counsel wholeheartedly agrees with the *Belz* Court's statement that:

Our profession relies intrinsically on the trust that clients are willing to place in their lawyers, and few acts of misconduct

have the capacity to erode that trust more quickly and thoroughly than the conversion of a client's funds to one's own use.

*In re Belz*, 258 S.W. 3d at 47. The *Belz* case, however, recognizes that an "unusual array of compelling mitigating factors" may warrant a sanction less than disbarment.

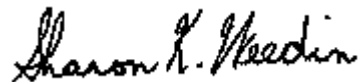
Informant agreed to submit this case with a stipulated recommendation for an indefinite suspension with no leave to apply for reinstatement for three years, given Respondent's mental health diagnosis, his forty plus years of clean practice, his admission of wrong doing, his payment of restitution, his apparent openness and commitment to long-term treatment, and the apparent lack of actual harm to the client, all factors cited as appropriate mitigation in the *Belz* decision.

## CONCLUSION

Disbarment is the presumptive sanction in a lawyer discipline case involving misappropriation of client funds. In rare cases, mitigating factors may warrant a lengthy, actual suspension of the attorney's license instead of disbarment. Disciplinary counsel believed, under the teaching of *In re Belz* and the unique circumstances of this case, that an indefinite suspension with no leave to apply for reinstatement for three years was an appropriate sanction recommendation.

Respectfully submitted,

ALAN D. PRATZEL      #29141  
Chief Disciplinary Counsel



By: \_\_\_\_\_  
Sharon K. Weedon      #30526  
Staff Counsel  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400 - Phone  
(573) 635-2240 - Fax

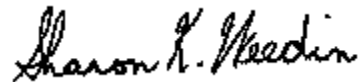
ATTORNEY FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent by e-filing on this 1st day of February, 2012 to:

Spencer J. Brown #18616  
920 Main St., Suite 1900  
Kansas City, MO 64105  
[sjb@deacylawy.com](mailto:sjb@deacylawy.com)

Gerald M. Handley #24294  
1100 Main, Suite 2800  
Kansas City, MO 64105  
[ghandley@handleylaw.net](mailto:ghandley@handleylaw.net)



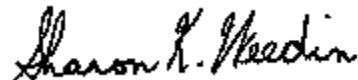
---

Sharon K. Weedin

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,910 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus free.



---

Sharon K. Weedin

## **APPENDIX**

### **TABLE OF CONTENTS**

<b>TABLE OF CONTENTS</b> .....	A1
Information (received by Advisory Committee (AC) March 4, 2011).....	A2-A7
Answer (received by AC April 1, 2011) .....	A8-A12
Transcript of Hearing Held August 30, 2011 .....	A13-A55
Exhibit A.....	A56-A86
Exhibit B .....	A87-A117
Psychiatric Evaluation by Dr. Peterson .....	A89-A110
Joint Stipulation between Informant and Respondent.....	A114-A117
Exhibit C.....	A118-A119
Exhibit D.....	A120-A133
Report dated April 20, 2010, by Stinson Morrison .....	A134-A136
Response dated May 14, 2010, from Respondent .....	A137-A144
Disciplinary Hearing Panel (DHP) Decision.....	A145-A146
Motion to Supplement Record .....	A147-A176